



Salt River

PIMA-MARICOPA INDIAN COMMUNITY

10005 East Osborn Road / Scottsdale, Arizona 85256-9722 / Phone (480) 850-8000

May 17, 2006

VIA ELECTRONIC MAIL

Mr. Darryl Francois
darryl.francois@mms.gov
Attn: 1813 ROW Study
Office of Energy and Economic Development
1849 C. Street NW, Mail Stop 2749-MIB
Washington, DC 20240

VIA ELECTRONIC MAIL

Mr. David Meyer
david.meyer@hq.doe.gov
Attn: 1813 ROW Study
Office of Electricity Delivery and Energy Reliability
Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

RE: Section 1813 Rights of Way Study

Dear Sirs:

These comments are submitted on behalf of the Salt River Pima-Maricopa Indian Community (SRPMIC) with regard to the Section 1813 of the Energy Policy Act of 2005 (Pub. L. 109-58) study of rights of ways in Indian Country.

The SRPMIC is located within the State of Arizona boundaries and is surrounded by the cities of Scottsdale, Tempe, Fountain Hills, and Mesa and shares a boundary with the Fort McDowell Yavapai Nation.

Issues affecting land and jurisdiction strike at the heart of the SRPMIC people. Because of our location, we are ever vigilant of surrounding development and encroachment. We face issues such as cultural preservation, trespass, illegal dumping and environmental quality along with a host of other issues such as jurisdiction, zoning and infrastructure needs.

While the SRPMIC has data regarding historical rates of compensation, we believe that such information is misleading in that it does not reflect the competitive rates that should have been charged at the time, but rather reflects an amount that was most often way below the market value. In addition to the historical undervaluation of reservations lands, SRPMIC's proximity to one of the fastest growing urban areas in the country ensures that rights of ways granted years ago cannot be compared in any way with the value of the land today. A more accurate picture would be a comparison of ROW rates that should have been paid against those rates actually paid and ultimately approved by the BIA. Thus, when information is portrayed in a way as to excite people by showing such a dramatic leap in inadequate rates vis-à-vis negotiated rates, a truer picture will be available.

Tribal governments perform both governmental and business functions in order to best provide for their people. This is exemplified in Sections 16 and 17 of the Indian Reorganization Act of 1934. Tribes often negotiate contracts for services and goods or enter into intergovernmental agreements without the straightjacket of federal regulation and being bound to uniform specific standards and procedures in addition to the requirements currently found in the Code of Federal Regulations. The current governing statutes and regulations for rights of way over Indian lands require payment of fair market value and consent of the owner.

It must be kept in mind that Indian lands include allotted lands owned by individual Indians, not tribes. While Indian lands are held in trust by the federal government, they are beneficially owned by Indian tribes or Indian individuals. The land at issue is not public land but private property. It is fair to ask if any other property owners would be deprived of their property in such a manner.

In addition to the issues of property rights, there is the issue of Indian tribes having the sovereign right to control what happens within their jurisdiction and territory. In matters affecting Indian lands and sovereignty federal agencies generally enter into negotiated rulemaking or consultation with Indian tribes in an effort to come to consensus about procedure and substantive standards. Similarly, Congressional action is often the result of working closely with Indian tribes and individuals.

The inherent sovereignty of Indian tribes pre-dates European presence is based upon the historic political relationship between the federal government and individual tribes. Matters are dealt with on a government-to-government basis. Special interest groups do not seem to, or refuse to, grasp this point and consistently view the relationship as one having a racial basis. Required tribal consent to rights of way on or through Indian land is an imperative exercise of tribal sovereignty. Sovereignty not only includes the right to govern, but includes the responsibility of a tribe to protect its members. This responsibility includes the need to ensure that tribal members and the tribe itself negotiate and receive fair value for the use and development of reservation resources. The SRPMIC has met this responsibility by continuing to compact with the United States pursuant to the Self-Governance Act. As such, the SRPMIC has a proven track record of its ability to govern itself and to negotiate with other governments and outside businesses on an equal playing field.

The requirement of tribal consent to ROWs on or through Indian land is vital to the preservation of the cultural aspects of any tribe. Tribal governments are charged with the responsibility of protecting sacred sites and cultural beliefs and practices. Any use of resources must take the local practices and beliefs into consideration. Such practices and beliefs vary from tribe to tribe. Each

tribe is in the best position to understand the importance of such matters to the continued existence of its people.

Tribal consent is also essential to a tribe's right to protect its membership and resources through the inherent right to exclude non-members. This right has been consistently reiterated in legislation, policy and case law. This inherent right could be jeopardized by removing tribal authority to determine if a person's presence is not in the best interest of the community.

Thus, the contemplated legislation which is the impetus for the 1813 rights of way study presents tribal and individual owners of trust lands the worst of both worlds: No respect for private property rights that would be shown to non-Indian lands; and no recognition of sovereignty through negotiated rulemaking or tribal consultation as in most other Congressional or legislative actions involving Indian tribes and Indian lands.


Based upon the foregoing, any study of rights of way on or through Indian lands must include:

1. Negotiated rule-making or at least true, good faith consultation with tribes.
2. The negotiated rulemaking or consultation process must include individual landowners, tribal experts on land development, tribal leaders, tribal elders, tribal attorneys, cultural resource sources, and any other persons with relevant knowledge chosen by they tribes.
3. Treatment of Indian trust lands like any other non-public lands owned by individuals or entities.
4. Individualized appraisals or other land valuation methods which conform to the current rights-of-way regulations and practices.
5. Consent of the beneficial owners as required by ILCA.
6. Consent of the Indian tribe with jurisdiction over the land.

The attached Resolution and incorporated Principals encapsulate the position of the SRPMIC regarding the Rights of Way study and the preservation of the tribal consent requirement for the granting of all rights of way.

On behalf of the Salt River Pima-Maricopa Indian Community I would like to thank you for your attention to these important issues. If you have any questions, or if more information can be provided, please contact Assistant General Counsel Catherine A. Aragon at (480) 362-7439.

Sincerely,



Joni M. Ramos
President

Attach: Resolution, SRPMIC Council
SRPMIC Principles

Xc: Members, SRPMIC Council

SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

10005 East Osborn Road
Scottsdale, Arizona 85256

Resolution Number SR-2478-2006

A RESOLUTION SUPPORTING TRIBAL SOVEREIGNTY, THE CONTINUATION OF TRIBAL CONSENT OF INDIAN ENERGY RIGHTS-OF-WAY AND THE INCORPORATION OF THE STATEMENT OF PRINCIPLES INTO THE SECTION 1813 RIGHTS-OF-WAY STUDY

WHEREAS The Salt River Pima-Maricopa Indian Community ("SRPMIC") Council has the authority, under Art. VII §§ 1 (a) and (d) of the Constitution of the Salt River Pima-Maricopa Indian Community to protect the interests of the Salt River Pima-Maricopa Indian Community and its members, including matters related to land, public welfare and safety, and cultural preservation of the SRPMIC, and pursuant to Art. VII §1 (j) advise and make recommendations to the federal government; and

WHEREAS The U.S. Congress enacted the Energy Policy Act of 2005 which includes Section 1813 addressing rights of ways in Indian Country; and

WHEREAS Section 1813 of the Energy Policy Act of 2005 requires the Departments of Energy and Interior to prepare a study on the compensation practices and policy implications associated with the issuance of tribal consent for energy-related rights-of-way crossing tribal lands ("Right of Way Study"); and

WHEREAS The Right-of-Way Study is a matter of great importance to the SRPMIC and to all tribes and may have significant implications regarding future legislation, resource development and tribal sovereignty; and

WHEREAS Under longstanding law and policy, the consent of the governing body of a tribe must be obtained as a condition for the grant or renewal of a right-of-way across tribal lands related to energy including, but not limited to, development, transmission and distribution, including transmission lines, rail lines, and access roads; and

WHEREAS The tribal consent requirement is a critical aspect of tribal sovereignty that allows tribal governments to negotiate acceptable terms, including those related to duration and compensation, for the use of tribal lands and goes to the very heart of tribal sovereignty; and

WHEREAS The SRPMIC has reviewed the attached Statement of Principles and has determined that these Principles should be incorporated in the Right-of-Way Study and maintained as a matter of federal law and policy; and

WHEREAS The SRPMIC is concerned that the aggressive time-frame outlined in the Federal Register Notice dated Dec. 29th, 2005 lacks the appropriate and necessary time needed for

review, historical data collection, meaningful consultation, and negotiated rule-making with Arizona Tribes or any other American Indian Band, Tribe, or Nation.

NOW THEREFORE BE IT RESOLVED that the Salt River Pima-Maricopa Indian Community hereby approves the attached statement of principles ("Attachment A") as an official policy position of the Salt River Pima-Maricopa Indian Community.

BE IT FURTHER RESOLVED that the Salt River Pima-Maricopa Indian Community directs that a copy of this Resolution and attached Statement of Principles be forwarded to the U.S. Departments of Interior and Energy for inclusion in the record related to the Right-of-Way Study.

BE IT FURTHER RESOLVED that the Salt River Pima-Maricopa Indian Community hereby recommends that the U.S. Departments Interior and Energy request a one-year extension from Congress on the Section 1813 Energy Rights-of-Way Study deadline date of August 7, 2006.

BE IT FINALLY RESOLVED that the President or Vice President is directed take all steps reasonable and necessary to carry out the intent of this Resolution.

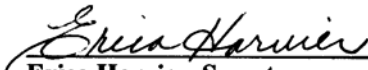
CERTIFICATION

Pursuant to the authority contained in Article VII, Section 1 (d) of the Constitution of the Salt River Pima-Maricopa Indian Community, ratified by the Tribe, February 28, 1990, and approved by the Secretary of the Interior, March 19, 1990, the foregoing resolution was adopted this 16th day of May 2006, by a poll held by the Community Council in Salt River, Arizona at which a quorum of 9 members were contacted by a vote of 7 for, 0 opposed, 1 abstention and 1 not voting.

**SALT RIVER PIMA-MARICOPA
INDIAN COMMUNITY**


Joni M. Ramos, President

ATTEST:


Erica Harvier, Secretary

SECTION 1813 RIGHT-OF-WAY STUDY – SRPMIC PRINCIPLES

1. **Tribal Sovereignty and Consent.** The power of any sovereign government to govern the territorial jurisdiction of their lands is fundamental. The power of tribes to prevent third parties from using tribal lands without tribal consent is a critical element of tribal sovereignty that has been reaffirmed in Federal and individual tribal law and policy for over 200 years. The tribal consent requirement for the use of Indian tribal lands must be honored and preserved.
2. **Conditions to Consent.** As with any business transaction, the tribal consent requirement includes the power of tribal governments to place conditions on the use of tribal lands, including conditions related to tribal jurisdiction, the preservation of environmental and cultural resources and beliefs, restrictions on the duration of use, and compensation for the best interest of the tribe and its people. This includes generations unborn.
3. **Appropriate Deference.** As reflected in the Indian Tribal Energy Development and Self Determination Act of 2005, deference to tribal decision-making should remain a fundamental component of Federal Indian energy policy.
4. **No Negative Effects.** Adherence to the tribal consent requirement has resulted in greater energy production in Indian country and thereby lower energy costs to consumers. The tribal consent requirement for rights-of-way has had a negligible, if any, effect on the availability or cost of energy to consumers.
5. **Preservation of Tribal Jurisdiction and Culture.** No right-of-way agreement or other business arrangement that permits third-party use of tribal land should reduce the sovereign power of a tribe over its lands or the activities conducted on its lands in the absence of the specific consent of the tribe. Further, there are concerns regarding cultural practices and preservation that any tribe will take into consideration when negotiating a ROW.
6. **Restricted Duration of Rights-of-Way.** Federal law and policy should not be changed to require perpetual rights-of-way or automatic renewals of rights-of-way because such changes would deprive tribes of management and control of their lands, tantamount to an unconstitutional taking.
7. **Negotiated Compensation.** As with any regular business transaction, Tribal governments should continue to have the right to negotiate compensation for the use of tribal land. Negotiated compensation gives tribal governments a fair share of the economic benefits produced by use of their lands. Such revenues help to sustain tribal governments and cultures.
9. **Industry Partnerships – Best Practices.** Federal law and policy should provide positive incentives to tribes and industry to foster partnerships and the mutual alignment of economic interests related to energy development, transmission and distribution. Federal Indian law and Indian tribal self-determination should not be diminished just because the energy industry is unwilling to negotiate a day-to-day business transaction with an Indian tribal government.
8. **National Security.** Indian nations are an integral component of energy security of the United States, not a threat to that security. History demonstrates that tribes have permitted critical energy facilities to be used pending compensation negotiations even in cases where tribal rights-of-way have expired. In addition, more Native Americans per capita serve in the United States Armed Forces than another ethnic group in the Nation. Indian Country's patriotism and service to this country is unquestionable.
10. **Allottee Experience.** The creation of a Federal administrative valuation process for fixing tribal right-of-way compensation would be an affront to tribal sovereignty and, as shown by the disastrous Federal management of Indian allottee resources, would be a mistake as shown in the on-going Cobell litigation. It would also be an abrogation of the federal trust relationship. Further, in the Youpee decision, the Supreme Court affirmed that Indian lands cannot be escheated without just compensation.